



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,067	07/16/2002	Enrique Martinez-Force	ARNO118345	4298
26389	7590	12/15/2004	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			JIANG, SHAOJIA A	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/009,067

Applicant(s)

MARTINEZ-FORCE ET AL.

Examiner

Shaojia A. Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): see attachment.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-12.Claim(s) withdrawn from consideration: none.

SAJ 12/1/04
SHAOJIA ANNA JIANG
PATENT EXAMINER

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Advisory Action

This Office Action is a response to Applicant's response (remarks) after FINAL filed on November 16, 2004.

3. The terminal disclaimer filed November 16, 2004, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. 6,388,113; 6,348,610; and 6,486,336 has been reviewed and is accepted. The terminal disclaimer has been recorded in the file.

Therefore, the obviousness-type double patenting rejections over U.S. 6,388,113; 6,348,610; and 6,486,336 of record in the Final Office Action June 17, 2004 is withdrawn.

5. The rejection of claims 1-12 made under 35 U.S.C. 103(a) as being unpatentable over Osorio et al. (WO 95/20313, of record) in view of Alvarez-Ortega et al. (O10, of record) for reasons of record stated in the Final Office Action dated June 17, 2004 is maintained.

Applicant's remarks filed November 16, 2004 after FINAL with respect to this rejection made under 35 U.S.C. 103(a) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated June 17, 2004.

In particular, Applicant argues that Osorio et al. separately claims a sunflower oil comprising between 3-85% of oleic acid or 29-54% stearic acid. Note that the instant claims are drawn to the limitation, a sunflower oil composition comprising more than

Art Unit: 1617

40% of oleic acid and more than 12% of a stearic acid. Claims 8 being dependent from claim 4 of Osorio et al. clearly reads on this limitation, a sunflower oil composition comprising more than 40% of oleic acid and more than 12% of a stearic acid, not separately as Applicant asserts; see claim 8 of Osorio et al., reciting "Sunflower seed having a stearic acid content as claimed in any one of claims 1-7, and in addition" "an oleic acid content between 3 and 84% by weight" (emphasis added); Thus, claim 8 indeed includes the limitation in claim 4 "having a stearic acid content between 10 and 19% by weight" since claim 8 is dependent from any one of claims 1-7.

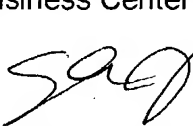
As discussed in the Final Rejection, the claimed invention is clearly obvious in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (571)272-0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Anna Jiang, Ph.D.
Primary Examiner, AU 1617
December 11, 2004